Fourth Review Conference
of the Parties to the Treaty
on the Non-Proliferation of Nuclear Weapons

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PROHIBITION OF ATTACKS ON NUCLEAR FACILITIES

Working Paper submitted by Hungary, the Netherlands and Sweden

1. The issue of the prohibition of attacks on nuclear facilities was given considerable attention in the Final Declaration of the Third Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons in 1985.
Indeed, the Conference recognized that:

> "... an armed attack on a safeguarded nuclear facility, or threat of attack, would create a situation in which the Security Council would have to act immediately in accordance with provisions of the United Nations Charter".

The Conference moreover considered that:

> "... such attacks could involve grave dangers due to the release of radioactivity and that such attacks or threats of attack jeopardize the development of the peaceful uses of nuclear energy. The Conference also acknowledges that the matter is under consideration by the Conference on Disarmament and urges co-operation of all States for its speedy conclusion".

2. The Chernobyl accident in 1986 provided dramatic insight into the consequences of accidental release of large amounts of radioactive substances.
Indeed, as a result of that accident, it has become even more evident that attacks on nuclear facilities could result in the release and dissemination of vast quantities of radioactive substances, and thus have devastating consequences amounting to mass

destruction. This could be the case not only for the immediately surrounding area and for the country in which the particular facility was located, but also for neighbouring states as well as even for more distant ones.

3. A prohibition of such attacks on nuclear facilities should therefore be global in order to be effective. It is, however, disappointing to note the lack of progress on this issue by the Conference on Disarmament since the Review Conference of the Non-Proliferation Treaty in 1985. An agreement on the prohibition of attacks on nuclear facilities is today not nearer to its "speedy conclusion" than it was in 1985.

4. It should be noted however that, consistent with the relevant recommendations of the Conference on Disarmament of 1986, and as a result of work pursued ever since, a fair amount of substantive work has been carried out. The main elements of a treaty on the prohibition of attacks on nuclear facilities have been outlined.
It is therefore all the more regrettable that the reports of the Conference on Disarmament on the subject over the recent years could state only the fact that substantive differences have basically remained unchanged. Indeed, despite considerable efforts, no solution is in sight on some of the fundamental problems of the issue.

5. The lack of progress is difficult to understand if some developments are recalled which have taken place since the Third Review Conference of the States Parties to the NPT in 1985: the Chernobyl accident; the Convention on the Early Notification of a Nuclear Accident and the Convention on Assistance in the Case of Nuclear Accident or Radiological Emergency adopted in 1986 in the framework of the IAEA; Resolution (GC(XXIX)/RES/444) adopted by the IAEA General Conference in 1985 on the protection of nuclear

installations devoted to peaceful purposes against armed attacks; Resolution (GC(XXXI)/RES/475) adopted by the IAEA General Conference in 1987, on the protection of nuclear installations against armed attacks; bilateral agreements for the prevention of incidents at sea.
More in general progress in the field of arms control and disarmament could be mentioned, e.g.: the INF agreement; the negotiations on a substantial reduction of the strategic nuclear arsenals of the USA and USSR; the negotiations on conventional armed forces in Europe; the negotiations on confidence and security building measures in Europe; last but not least: the spectacular changes in the East-West political climate.

6. It is a matter of concern that an attack launched against a nuclear facility may result in the release of a large amount of radioactive substances.
It is also felt by a number of countries that the existing legal provisions, stipulated in the 1977 First Additional Protocol to the 1949 Geneva Convention, need improvement.

7. According to the NPT, all States Parties are to contribute alone or in cooperation with other States to the further development of the applications of atomic energy for peaceful purposes. Article IV of the NPT explicitly confirms the inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with articles I and II of this Treaty.

8. It is therefore of utmost importance that the Fourth Review conference of the States Parties to the NPT again attempt to create momentum by rendering its full authority to resolve the question of the prohibition of attacks on nuclear facilities, amongst others, by envisaging specific and practical steps such as:

A. to make a strong appeal to States which participate in the Conference on Disarmament to overcome their differences and to reach a speedy conclusion on a treaty on the prohibition of attacks on nuclear facilities which would result in mass destruction.

B. to call on all states to become a party to the 1977 First Additional Protocol to the 1949 Geneva Convention. States Parties could also consider the possibilities of a diplomatic conference in order to improve on the present regime with regard to the protection of nuclear facilities;

C. to appeal to all States Parties to the NPT to take into account, when reviewing their military doctrines, the need for protection of nuclear facilities the attack of which could result in mass destruction;

D. to invite States Parties to consider appropriate confidence building measures e.g. in a bilateral and/or a regional framework to promote the aim of protecting nuclear installations, taking into account specific characteristics of each region;

E. to underline in the Final Declaration the urgency that characterizes the issue and the need to find a solution by expressing a firm commitment to the elaboration of a Treaty on the Prohibition of Attacks on Nuclear Facilities.